IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.1007 OF 2006

Vasant Durga Shinde ...Appellant

vs.

Maruti Eknath Chavare & ors. ...Respondents

Mr.Salil Roy for the Appellant
Mr.Milind Deshmukh for Respondent No.1.

CORAM: A.S.OKA,J.
DATE : JULY 5, 2007.

P.C.:

1. Heard learned Advocate for the Appellant. The Appellant is the original Defendant No.1 who has suffered a decree for specific performance of agreement of sale of immoveable property in a suit filed by the first Respondent herein. The decree for specific performance passed by the trial Court has been confirmed in Appeal.

2. The submission of the learned Advocate for the Appellant is that the revenue record and especially cultivation column of the 7/12 extracts shows the possession of the Appellant even after the execution of the suit agreement and therefore, it is obvious that the possession of the suit property was not handed over to the first Respondent. He pointed out that specific case of the Appellant was that the Appellant borrowed money from the first and second Respondent and by way of security for the amount advanced, the suit agreement was executed. He pointed out that the first and the second

respondent had paid a sum of Rs.500/- each to the Appellant. He submitted that though a pursis was filed by the second Respondent before the Trial Court admitting that the entire amount of Rs.1,000/- was paid by the first Respondent to the Appellant, in the Appeal preferred by the Appellant legality and validity of the pursis was challenged by the second Respondent.

3. I have considered the submissions. There is no dispute about the execution of the suit agreement for sale. The Courts below have accepted the case made out by the first Respondent as regards the payment of Rs.1,000/- by way of earnest money by the first Respondent to the Appellant. The Appellate Court has referred to the deposition of the witness examined by the first Respondent in which the said witness deposed that the sum of Rs.1,000/- was paid to the Appellant by the first Respondent. Initially, the second Respondent supported the first Respondent and in an Appeal preferred by the Appellant an attempt was made by the second Respondent to challenge the pursis filed by her. It must be noted here that there was no challenge by the second respondent to the decree passed by the Courts below.

4. The agreement was executed on 25th June 1995. On 18th January 1986, a notice was sent by the first Respondent to the Appellant. By the said notice the Appellant was called upon

to execute the sale deed by accepting the balance consideration. It is pertinent to note that there is no specific denial by the Appellant in the written statement as regards service of notice dated 18th January 1986. In paragraph 3 of the plaint, there is a specific averment that notice was sent and the same was not replied to by the Appellant. Only at the stage of trial an attempt was made by the Appellant to dispute the thumb impression on the postal acknowledgement. No importance can be attached to the fact that the name of the Appellant continued in the revenue record. The name of the first Respondent could have been incorporated only on the basis of a sale deed.

5. The courts below have discarded the case made out by the Appellant that the transaction was a money lending transaction. The findings of fact are based on appreciation of oral and documentary evidence on record. There is no reason to interfere with the said findings. Hence, Second Appeal is dismissed with no order as to costs.

JUDGE